

CLEMENT SETH ROBERTS (STATE BAR NO. 209203)  
croberts@orrick.com  
BAS DE BLANK (STATE BAR NO. 191487)  
basdeblank@orrick.com  
ALYSSA CARIDIS (STATE BAR NO. 260103)  
acaridis@orrick.com  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669  
Telephone: +1 415 773 5700  
Facsimile: +1 415 773 5759

SEAN M. SULLIVAN (admitted *pro hac vice*)  
sullivan@ls3ip.com  
COLE RICHTER (admitted *pro hac vice*)  
richter@ls3ip.com  
LEE SULLIVAN SHEA & SMITH LLP  
656 W Randolph St., Floor 5W  
Chicago, IL 60661  
Telephone: +1 312 754 0002  
Facsimile: +1 312 754 0003

*Attorneys for Plaintiff and Counter-Defendant Sonos, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SONOS, INC.,

Case No. 3:20-cv-06754-WHA

## Plaintiff and Counter-defendant,

Consolidated with  
Case No. 3:21-cv-07559-WHA

V.

GOOGLE LLC,

**SONOS, INC.'S RESPONSE TO  
GOOGLE LLC'S MOTION TO AMEND  
THE JUDGMENT PURSUANT TO  
FED. R. CIV. P. 59(e)**

#### **Defendant and Counter-claimant.**

Date: December 14, 2023

Time: 8:00 a.m.

Place: Courtroom 12, 19<sup>th</sup> Floor

Judge: Hon. William Alsup

1           Sonos writes to clarify two statements in Google’s motion, Dkt. 877. Neither of these  
 2 clarifications requires any modification to the proposed judgment filed at Dkt. 877-2.

3           First, Google says that the Court’s order finding the ’885 and ’966 patents unenforceable  
 4 and invalid “moot[ed]” nine of its affirmative defenses for those patents, ranging from unclean  
 5 hands to implied license. Dkt. 877 at 6-7. Sonos’s position is that those defenses, at least for the  
 6 ’885 and ’966 patents, are forfeited and not mooted. After trial, Google raised only prosecution  
 7 laches and equitable estoppel in its post-trial brief on affirmative defenses. Dkt. 819. Thus, Google  
 8 forfeited every other affirmative defense for the ’885 and ’966 patents and may not raise those other  
 9 affirmative defenses on remand. *See In re Google Tech. Holdings LLC*, 980 F.3d 858, 863-64 (Fed.  
 10 Cir. 2020) (holding that Google forfeited arguments it failed to raise before the PTAB).

11          Second, Google says that “Sonos elected not to try the remaining claims [of the ’615 patent]  
 12 based on” the Court’s ruling that claim 13 is not infringed and is invalid. Dkt. 877 at 4, 6. This is  
 13 inaccurate. After the Court’s noninfringement ruling for claim 13, Sonos could not have pursued  
 14 infringement for any of the ’615 patent’s asserted claims that depend from claim 13 (claims 14-15  
 15 and 18-21).<sup>1</sup> *See Wahpeton Canvas Co., Inc. v. Frontier, Inc.*, 870 F.2d 1546, 1553 n. 9 (Fed. Cir.  
 16 1989). And in April 2023, the PTAB held that, among others, claims 14 and 18-25 were  
 17 unpatentable.<sup>2</sup> The Court then determined before trial that “the ’615 patent is out of the case,” in  
 18 part because Google had “long ago” “abandoned” its claims for “[i]nvalidity of claims 18, 19, and  
 19 25 of the ’615 patent.” Dkt. 580 at 1-2; *see also* Dkt. 588 at 27-28 (during a hearing, the Court  
 20 stated: “those issues, the ’615 … those miscellaneous claims are out of the case. O-U-T.”). Thus,  
 21 the Court ruled that Sonos could not try the ’615 patent.

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 25 <sup>1</sup> In addition, independent claim 25 is substantively identical to independent claim 13, so Sonos  
 26 had no basis to try infringement of claim 25 (and its dependents) in view of the Court’s  
 27 noninfringement ruling for claim 13.

28 <sup>2</sup> By that point, Google had already effectively abandoned its invalidity claims here for claims 14,  
 29 15, 20, 21, and 26 by failing to address those claims in its invalidity expert report in November  
 30 2022. *See Fed. R. Civ. P. 37(c)(1); Rembrandt Vision Techs., L.P. v. Johnson & Johnson Vision  
 31 Care, Inc.*, 725 F.3d 1377, 1381 (Fed. Cir. 2013) (an expert witness “may not testify to subject  
 32 matter beyond the scope of the witness’s expert report unless the failure to include that  
 33 information in the report was substantially justified or harmless” (citation omitted)).

1 Dated: November 8, 2023

2 By: /s/ Clement S. Roberts

3 Clement S. Roberts  
Bas de Blank  
Alyssa Caridis

4 ORRICK, HERRINGTON & SUTCLIFFE LLP

5 Sean M. Sullivan  
Cole Richter

6 LEE SULLIVAN SHEA & SMITH LLP

7 *Attorneys for Plaintiff and  
Counter-defendant Sonos, Inc.*

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